

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201116006**

Release Date: 4/22/2011

Index Number: 2041.00-00, 2601.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-129552-10

Date:

December 27, 2010

Re:

Legend:

Decedent =

Trust =

Spouse =

Date 1 =

Date 2 =

Date 3 =

Court =

x =

y =

z =

Dear :

This letter responds to your letter dated July 13, 2010, requesting gift and estate tax rulings with respect to Decedent and Decedent's estate.

On Date 1, Court entered the Final Judgment of Divorce (Judgment) which dissolved the marriage between Decedent and Spouse and settled all marital and property rights among the parties. In addition to awarding certain property to Decedent and ordering Spouse to make monthly alimony payments to Decedent, the Court ordered Spouse to establish an irrevocable trust, Trust, with a cash property settlement for Decedent's lifetime benefit. The Trust was in partial settlement of Spouse's support obligation to Decedent and was incorporated into Judgment.

On Date 2, Spouse established and funded Trust with \$x. Pursuant to Judgment, Spouse subsequently transferred \$y and \$z to Trust. Pursuant to Judgment, Court appointed an independent person to serve as the trustee of Trust.

Under the terms of Trust, Decedent would receive all the net income of the trust during her lifetime. The independent trustee had the discretion to distribute principal to Decedent, or apply principal for her benefit, during her lifetime. Upon Decedent's death, Trust would terminate and Decedent possessed a testamentary limited power of appointment to appoint the trust assets to her surviving issue. If Decedent failed to appoint the trust assets, then the trustee would distribute the trust assets to Decedent's surviving issue, *per stirpes*. The trust instrument did not grant Decedent any power to alter, amend, revoke, or terminate Trust or any right to remove, discharge, or appoint the trustee of Trust.

Decedent died Date 3, survived by her daughter. Decedent did not exercise her testamentary limited power of appointment.

You have requested the following rulings:

1. Decedent was not the transferor, donor, or settler of the Trust assets for purposes of §§ 2501, 2502, 2503, 2511, or 2702.
2. The value of the Trust assets is not included in Decedent's gross estate under §§ 2031, 2033, 2036, 2038, 2039, or 2041.

Ruling Request 1

Section 2501(a) of the Internal Revenue Code imposes a gift tax, computed under § 2502, for each calendar year on the transfer of property by gift during the year by an individual.

Section 2502(c) provides that the tax imposed by § 2501 shall be paid by the donor.

Section 2503(a) provides that the term "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (§ 2522 and following).

Section 2511(a) provides that the gift tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 2516 provides that where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in

property made pursuant to such agreement (1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of issue of the marriage during minority, shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

Section 2702(a)(1) provides, in general, that solely for purposes of determining whether a transfer in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or by any applicable member of the transferor's family (as defined in § 2701(e)(2)) shall be determined as provided in paragraph (2).

In this case, the transfer was pursuant to Judgment which dissolved the marriage of Spouse and Decedent and settled the parties' marital and property rights. The divorce and the settlement of the parties' marital and property rights, including the Court order to establish Trust in partial satisfaction of Spouse's support obligation to Decedent, were entered into on the same date, Date 1. Accordingly, the transfer of the cash property to Trust constitutes a transfer for full and adequate consideration under § 2516. The only taxable gift is the gift of the trust remainder to Decedent's surviving issue. For gift tax purposes, Spouse, not Decedent, is the transferor of the gift of the remainder. Therefore, based upon the facts and representations made, we conclude that Decedent was not the transferor, donor, or settlor of Trust for purposes of §§ 2501, 2502, 2503, 2511, or 2702. See Rev. Rul. 75-73, 1975-1 C.B. 313.

Ruling Request 2

Section 2031(a) provides that the value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in a case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period that does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2038(a)(1) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of death to any change through the exercise of a power by the

decedent to alter, amend, revoke, or terminate the interest in the property or where the decedent relinquished such power within the three-year period ending on the date of the decedent's death.

Section 2039(a) provides that the gross estate shall include the value of an annuity payment or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 1, 1931 (other than as insurance under policies of the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his or her life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

In this case, Spouse transferred cash property to Trust in partial satisfaction of his spousal support obligation. Accordingly, Decedent is not a transferor for purposes §§ 2036 and 2038. Under the terms of Trust, Decedent would receive all the net income of the trust during her lifetime. The independent trustee had the discretion to distribute principal to Decedent, or apply principal for her benefit, during her lifetime. Decedent possessed a testamentary limited power of appointment to appoint the trust assets to her surviving issue. The trust instrument did not grant Decedent any power to alter, amend, revoke, or terminate Trust or any right to remove, discharge, or appoint the trustee of Trust. Accordingly, based on the facts submitted and representations made, we conclude that the value of the Trust assets are not includible in Decedent's gross estate under §§ 2031, 2033, 2036, 2038, 2039, or 2041.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Lorraine E. Gardner, Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 purposes
Copy of this letter

cc: